

**SUPREME JUDICIAL COURT GUIDANCE REGARDING THE ISSUANCE OF  
EXPLANATORY MEMORANDA**

We have carefully considered whether Canon 3(b)(9) of our Code of Judicial Conduct should apply to a memorandum issued by a judge that provides or supplements the reasons in support of an earlier order (an explanatory memorandum). We have determined that, in all but the most unusual circumstances, the decision whether to issue an explanatory memorandum is left to the sound judgment of the individual judge and is not an appropriate ground for judicial discipline under Canon 3(b)(9). We provide guidance here to assist a judge in exercising that sound judgment.

We encourage judges to explain the basis for their decisions on the record, including decisions concerning bail and sentencing. By helping litigants to understand the basis for decisions in cases, the judge also promotes public understanding of judicial proceedings. In some instances, such as decisions regarding bail, where the volume of matters may make it difficult always to articulate detailed findings, judges should set forth their reasons on forms prepared for this purpose. When a judge orally renders a decision and intends to explain his or her reasons in a written memorandum of law, the judge should inform the parties that an explanatory memorandum will be forthcoming.

When the judge has not promised or reserved the right to issue a written explanatory memorandum, and such a memorandum has not been requested by a party or an appellate court, a judge should issue an explanatory memorandum only after careful consideration, weighing, at a minimum, the following factors:

- the importance of avoiding or alleviating the parties' or the public's misunderstanding or confusion by supplementing the record to reflect in more detail the reasons in support of the judge's earlier decision;
- the amount of time that has elapsed since the order was issued and the extent to which the judge's reasons for the decision remain fresh in his or her mind;
- the risk that an explanatory memorandum may unfairly affect the rights of a party or appellate review of the underlying order; and
- the danger that the issuance of an explanatory memorandum would suggest that judicial decisions are influenced by public opinion or criticism voiced by third parties, and would not promote confidence in the courts and in the

independence and impartiality of judges.

A judge may only issue an explanatory memorandum if the court retains jurisdiction of the case, and if judgment has not yet entered. Even if the court continues to have jurisdiction over the case, an explanatory memorandum is appropriate only if issued within a reasonable time of the underlying order and if the judge clearly recalls his or her reasons for the decision. An explanatory memorandum should not be issued solely to respond to public criticism of the decision, and should not rely on any information obtained through the press or other ex parte sources.